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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,402	04/23/2001	Robert D. Kluser	7201 US	6386

7590

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EXAMINER

WILKENS, JANET MARIE

ART UNIT PAPER NUMBER

3637

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/841,402

Applicant(s)

KLUSER ET AL.

Examiner

Janet M. Wilkens

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 4/6 is/are rejected.
- 7) ☒ Claim(s) 7, 5/6, and 6/7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Claim Objections***

A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim.

A claim which depends from a dependent claim should not be separated by any claim which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

(In other words, it is improper for a claim to depend from a later appearing claim.)

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez. Rodriguez teaches a rack-mounting system (Fig. 2) comprising: a frame (top, bottom and side walls of 20) forming a central compartment (entire inside of housing 20) and including a central rib/wall (15), a sleeve (a; see Attachment A) adapted to received an instrument and fit into the compartment

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(conceivably anywhere inside the frame; see revised Attachment A) and means for detachably securing the sleeve within the frame (b,c; see attachment A).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez. As stated above, Rodriguez teaches the limitations of claim 1, including a central rib/wall within the frame. For claim 4, Rodriguez fails to teach that the compartments formed by the rib/wall are equal in size. It would have been an obvious design consideration to one of ordinary skill in the art at the time of the invention to modify the system of Rodriguez by locating the rib/wall so that the compartments are equal in size, depending on the desired need/use of the frame, e.g. depending on what is to be located/stored in each compartment.

Claims 2, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Noda et al and Ryan et al. As stated above, Rodriguez teaches the limitations of claims 1 and 4, including a sleeve detachably secured in a frame. For claims 2, 5 and 6, Rodriguez fails to teach that the securing means is specifically a spring and button member. Noda teaches a rack-mounting system (Fig. 2) comprising: a frame (24), a sleeve (22)

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fit into the compartment and means for detachably securing the sleeve within the frame (see Fig. 8). The securing means comprising a spring (88) mounted on the frame and a button (94) mounted on the spring and extending through holes in the frame and sleeve. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Rodriguez by using an alternate type of securing means between its sleeve and frame, i.e. using the spring and button means of Noda therein instead of the generic means presently disclosed, since these means are functional equivalents and it appears that either type of means would work equally well between the sleeve and frame of Rodriguez. Furthermore, assuming that the base of the frame of Rodriguez is flush with a support surface, a "fake bottom" such as is taught by Ryan et al at 16 could be employed to allow the spring to flex. Also when the components 25 are removed from the sleeve, the buttons can be depressed from there within.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Russo. As stated above, Rodriguez teaches the limitations of claim 1, including a sleeve detachably secured in a frame. For claim 3, Rodriguez fails to teach that the sleeve is made of two members, having mating fingers. Russo teaches members (14) attached together via mating fingers. First, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Rodriguez by making the sleeve plural pieces, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Furthermore, it would have been obvious to connect the pieces

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using mating fingers, such as is taught by Russo, since this type of attachment is well known and would work well connecting the halves together.

### ***Allowable Subject Matter***

Claims 7, 5/6 and 6/7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed April 12, 2004 have been fully considered but they are not persuasive. The applicant argues that Rodriguez's housing is not a rack mounted frame with a central compartment/divided compartment having a sleeve located therein/attached thereto. The examiner disagrees. The housing walls of Rodriguez, including the top, bottom and side walls thereof, do form a frame; a frame that is capable of being stored in an instrument rack. Please note that no system/rack interconnection is being claimed; therefore, the fact that the housing of Rodriguez can be placed in an instrument rack satisfies this limitation. Furthermore, it is argued that the strut of Rodriguez does divide the compartment into two smaller compartments, one on its left and the other on its right. The fact that the strut does not "close off" one compartment from the other does not preclude this member from being considered a divider and a wall (i.e. the strut forms a partial wall). As for the "centralized divider" limitation, as stated above, to relocate a divider member of a structure to reconfigure the usable

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space on either side thereof is an obvious design consideration depending on what is to be located/stored in each compartment. It is further argued that the sleeve of Rodriguez is locatable on either side of the divider (see revised attachment A; Whether or not it is useable in an alternate position being irrelevant). As for the attachment of the sleeve, although not specifically discussed, the type of slot/projection attachment shown in Fig. 2 of Rodriguez is well known in the art (and most likely why not specifically discussed). Also the addition of the "fake" bottom would simply allow the alternate securement means to work properly. Furthermore, it should be noted that everything is detachable, that applies to the sleeve of Rodriguez, and that either attachment means would provide a degree of securement to the sleeve in the frame whether or not the top of the frame is in place.

Applicant's arguments not addressed have been considered persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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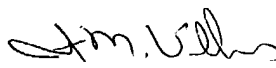
the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (703) 308-2204. The examiner can normally be reached on Monday-Thursday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens  
February 20, 2004

  
JANET M. WILKENS  
PRIMARY EXAMINER  
AAU 3637



**5,138,525**

FIG. 2

